

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMIE GARRETT,)	CASE NO. 5:11 CV 2638
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	<u>ORDER ADOPTING</u>
)	<u>MAGISTRATE'S REPORT AND</u>
)	<u>RECOMMENDATION</u>
MICHELLE MILLER,)	
Warden,)	
)	
Respondent.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kenneth S. McHargh. The Report and Recommendation (ECF # 9), issued on August 13, 2012, is hereby ADOPTED by this Court. Petitioner filed this action requesting a writ of habeus corpus pursuant to 28 U.S.C. §2254, challenging the constitutionality of his judgments of conviction for menacing by stalking and violating a protective order in Stark County, Ohio. The Respondent filed a motion to dismiss the petition, (ECF #8), to which the Petitioner has not responded.

The Magistrate Judge recommends that the Petitioner's first claim be denied because he has not established a violation of any clearly established federal law, as determined by the Supreme Court of the United States. Rather, he challenges the state court's application of state sentencing laws. Further, the Magistrate has recommended that the other two claims be denied

because they have been procedurally defaulted. The Petitioner has not filed any objections to the Magistrate's Report and Recommendation.

The Court has reviewed *de novo* the Report and Recommendation, *see Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999), and ADOPTS the Report and Recommendation in its entirety. The petition is, therefore, denied, and the case is dismissed. Further, for the reasons stated in the Magistrate Judge's Report and Recommendation, a reasonable jurist could not conclude that dismissal of the Petition is in error or that Petitioner should be permitted to proceed further. Accordingly, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b). IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: September 10, 2012